

Friedman, J.P., Webber, Gesmer, Kern, JJ.

4379N In re Capital Enterprises Co.,
Petitioner-Appellant,

Index 653961/16

-against-

Alvin Dworman,
Respondent-Respondent.

Morrison Cohen LLP, New York (Alvin C. Lin of counsel), for
appellant.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., New York
(Christopher J. Sullivan of counsel), for respondent.

Order, Supreme Court, New York County (Shirley Werner
Kornreich, J.), entered March 3, 2017, which, to the extent
appealed from as limited by the briefs, upon reargument, adhered
to the original determination denying petitioner Capital
Enterprises Co.'s motion to compel the arbitration of its
partnership dissolution claim (including the distribution of
assets), unanimously reversed, on the law, without costs, and the
motion to compel granted.

Since the alleged oral agreement to sell or transfer
partnership assets attempts to modify several substantive
provisions of petitioner's partnership agreement concerning the
distribution of partnership assets, the broad arbitration
provision of the partnership agreement controls the parties'
dispute (see *Matter of Helmsley [Wien]*, 173 AD2d 280 [1st Dept

1991]). The merits of the claims, such as the applicability of the statute of frauds, should be determined by the arbitrator (see CPLR 7501; *Matter of Praetorian Realty Corp. [Presidential Towers Residence]*, 40 NY2d 897, 898 [1976]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 27, 2017



CLERK